

ORIGINAL

OPEN MEETING



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MEMORANDUM
Arizona Corporation Commission

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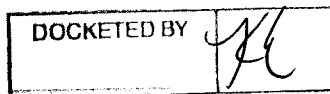
TO: THE COMMISSION

JAN 19 2016

2016 JAN 20 P 3:34

FROM: Utilities Division

DATE: January 20, 2016



AZ CORP COMMISSION
DOCKET CONTROL

RE: COMMISSION INQUIRY INTO POSSIBLE MODIFICATION OF THE COMMISSION'S HOLDING COMPANIES AND AFFILIATED INTEREST RULES, A.A.C. ARTICLE 8, R14-2-801 ET SEQ. (DOCKET NO. AU-00000A-15-0246)

I. Introduction

This Docket was opened to consider possible revisions to the Arizona Corporation Commission's ("Commission") Affiliated Interest Rules. Subsequently an application was filed in the Docket on August 19, 2015 by several telecommunications providers to amend the Rules based upon and supported by changes made by the Arizona Legislature to A.R.S. §40-285 in 2013. Informal comments were requested by Staff on the proposed change. No party opposed the proposed change. Staff recommends the commencement of a rulemaking as discussed below to amend the Affiliated Interest Rules to reflect the change requested by the Applicants.

II. Background

On July 2, 2015, the Utilities Division Staff of the Commission requested that a Docket be opened for the purpose of considering possible revisions to Arizona Administrative Code ("A.A.C.") R14-2-801 et seq., the Affiliated Interest rules ("Rules"). As a result, this docket was opened.

On August 19, 2015, Cox Communications ("Cox"), Qwest Corporation dba CenturyLink QC ("CenturyLink"), tw telecom of arizona llc ("tw telecom") and AT&T Inc. ("AT&T") (collectively, the "Applicants"), filed an Application for Rulemaking to Amend A.A.C. R14-2-802(A).

At the Commission Staff Meeting held on October 20, 2015, the Commission¹ authorized Staff to proceed with a more narrowly focused rulemaking at this time to reflect the changes proposed by the Applicants which are based upon and supported by the changes made to A.R.S. §40-285 by the Arizona Legislature in 2013. The Commission directed Staff to move forward with a review of the Applicants' proposed rule language for purposes of the rulemaking.

On November 16, 2015, Staff requested informal comment from interested parties concerning the Applicants' proposed Rule change. Written comments were received from the Arizona Local Exchange Carriers Association ("ALECA"); AT&T; Windstream and its certificated subsidiaries ("Windstream");² Integra Telecom ("Integra");³ Arizona Public Service ("APS"); and

¹ Chairman Susan Bitter Smith did not participate.

² Windstream Communications, Inc., Talk America, Inc., McLeodUSA Telecommunications Services, LLC and Paetec Communications, Inc.

Qwest Corporation d/b/a CenturyLink QC, CenturyLink Communications, L.L.C. and CenturyLink Public Communications, Inc. ("CenturyLink and certain of its affiliates").

III. Discussion

The Applicants propose to amend the Rules to exempt telecommunications carriers, whose retail telecommunications services have all been determined to be competitive, from application of the Rules, except as may otherwise be determined by a future Commission order. The specific change proposed is based upon and supported by the changes to A.R.S. §40-285 made by the Arizona Legislature in 2013⁴. The specific language change proposed by the Applicants is as follows:

R14-2-802(A). Applicability

- A. These rules are applicable to all Class A investor-owned utilities under the jurisdiction of the Commission and are applicable to all transactions entered into after the effective date of these rules. Notwithstanding the preceding sentence, these rules shall not apply to a telecommunications utility whose retail telecommunications services have been classified as competitive by the Commission pursuant to A.A.C. R14-2-1101 et seq., except as may otherwise be determined by a future Commission order.

The Applicants state that "the Rules will continue to apply to all Class A investor-owned utilities including all telecommunications carriers unless the carrier either (1) holds a Certificate of Convenience and Necessity issued by the Commission pursuant to A.A.C. R14-2-1105 or 1106 or (2) has had all of its retail telecommunications services classified as competitive by the Commission pursuant to A.A.C. R14-2-1108."⁵ Further, the Applicants state the proposed amendment acknowledges and expressly preserves the Commission's authority to require individual utilities (otherwise exempt under the amended Rules) to comply with the Rules, if the Commission so orders."⁶

No party filing informal comments opposed the proposed Rule change. All of the telecommunications providers filing informal comments supported the proposed Rule change. Windstream states that the Legislature's exemption of competitive telecom providers from a review of asset transfers or dispositions, supports the requested change to the Rules. Given the addition of Subpart (F) to A.R.S. §40-285, Commission approval should not be required if that carrier's affiliate (or holding company) chooses to reorganize, merge, consolidate or refinance⁷. AT&T states that although the Rules provide for a waiver process, applying for and receiving waivers still ties up resources and because waivers are subject to interpretation, they do not provide the type of certainty

³ Eschelon Telecom of Arizona, Inc., Electric Lightwave, LLC and Mountain Telecommunications of Arizona, Inc. all dba under Integra Telecom.

⁴ In 2013, the legislature added Subpart (F) to the statute which reads as follows: F: "This section does not apply to a telecommunications corporation whose retail telecommunications services are all classified as competitive by the commission, except as may otherwise be determined by a commission order after the effective date of this amendment to this section."

⁵ Application at p.5.

⁶ Id.

⁷ Windstream informal comments at p. 1

desired by carriers.⁸ Integra believes that the Rules are unnecessary for competitive carriers.⁹ APS does not oppose the change but would oppose any other amendments to the Rules that would have the effect of increasing the affiliate regulation of electric utilities or affect any waivers granted to APS by the Commission.¹⁰ CenturyLink states that the telecommunications market has changed dramatically and that competitive telecom providers cannot make up for their bad business diversification decisions by passing the losses through to utility customers in the form of rate increases. Thus, there is no longer a need to require competitive providers to comply with the Rules.¹¹

IV. Staff Recommendations

Staff recommends that the Commission direct Staff to file, by February 12, 2016, with the Office of the Secretary of State, for publication in the *Arizona Administrative Register* no later than March 4, 2016, (1) a Notice of Proposed Rulemaking Docket opening and (2) a Notice of Proposed Rulemaking that includes the text of the proposed rules set forth in Exhibit A. Staff further recommends that the Commission direct Staff to include a preliminary Economic, Small Business and Consumer Impact statement with respect to the proposed rules.

Based on consultation with the Hearing Division, Staff further recommends that the Commission direct the Hearing Division to hold oral proceedings to receive public comment on the Notice of Proposed Rulemaking on April 14, 2016, at 10:00 a.m., or as soon as practicable thereafter, in Hearing Room No. 1 of the Commission's offices in Phoenix, Arizona.

Staff further recommends that interested parties be requested to provide written comments concerning the Notice of Proposed Rulemaking by filing any comments with the Commission's Docket Control by April 4, 2016. Staff further recommends that the Commission direct Staff to file, by April 11, 2016, a summary of formal written comments received by April 4, 2016 along with Staff responses. The Staff should also be directed to file a summary of all formal comments including comments filed after April 4, 2016, (both written and oral) with Staff responses by May 6, 2016.

Staff further recommends that the Commission direct the Utilities Division/Legal Division to file with Docket Control by April 28, 2015 an Economic, Small Business and Consumer Impact Statement which conforms to A.R.S. §41-1057 (A)(2) that address' the economic impact of the recommended changes to the Rules.

Finally, Staff recommends that the Commission establish additional procedural deadlines and requirements as may be necessary consistent with the Administrative Procedures Act and Commission rulemaking procedure.

8 AT&T Informal Comments at 2.

9 Integra Informal Comments at p.1.

10 APS Informal Comments at 1-2.

11 CenturyLink Informal Comments at 3.

A handwritten signature in black ink, appearing to read "T. M. Broderick", written in a cursive style.

Thomas M. Broderick
Director
Utilities Division

TMB:MAC:nr\MAS

ORIGINATOR: Matt Connolly

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 DOUG LITTLE
Interim Chairman
3 BOB STUMP
Commissioner
4 BOB BURNS
Commissioner
5 TOM FORESE
Commissioner
6

7 COMMISSION INQUIRY INTO POSSIBLE
MODIFICATION OF THE COMMISSION'S
8 HOLDING COMPANIES AND
AFFILIATED INTEREST RULES, A.A.C.
9 ARTICLE 8, R14-2-801 ET SEQ.

DOCKET NO. AU-00000A-15-0246

DECISION NO. _____

ORDER

10
11 Open Meeting
February 2 and 3, 2016
12 Phoenix, Arizona

13 BY THE COMMISSION:

14 **FINDINGS OF FACT**

15 **I. Introduction**

16 1. This Docket was opened to consider possible revisions to the Arizona Corporation
17 Commission's ("Commission") Affiliated Interest Rules. Subsequently an application was filed in the
18 Docket on August 19, 2015 by several telecommunications providers to amend the Rules based upon
19 and supported by changes made by the Arizona Legislature to A.R.S. §40-285 in 2013. Informal
20 comments were requested by Staff on the proposed change. No party opposed the proposed change.
21 Staff recommends the commencement of a rulemaking as discussed below to amend the Affiliated
22 Interest Rules to reflect the change requested by the Applicants.

23 **II. Background**

24 2. On July 2, 2015, the Commission's Utilities Division Staff requested that a Docket be
25 opened for the purpose of considering possible revisions to Arizona Administrative Code ("A.A.C.")
26 R14-2-801 et seq., the Affiliated Interest Rules ("Rules"). As a result, this Docket was opened.

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3. On August 19, 2015 representatives on behalf of Cox Communications ("Cox"), Qwest Corporation dba CenturyLink QC ("CenturyLink"), tw telecom of arizona llc ("tw telecom") and AT&T Inc. ("AT&T") (collectively, the "Applicants"), filed an Application for Rulemaking to Amend A.A.C. R14-2-802(A).

4. At the October 20, 2015 Commission Staff Meeting, the Commission¹ authorized Staff to proceed with a more narrowly focused rulemaking intended to reflect the changes proposed by the Applicants which are based upon and supported by the changes made to A.R.S. §40-285 by the Arizona Legislature in 2013.² The Commission directed Staff to move forward with a review of the Applicants' proposed Rule language for purposes of the rulemaking.

5. On November 16, 2015, Staff requested informal comment from interested parties concerning the Applicants' proposed Rule language.

6. Written comments were received from the Arizona Local Exchange Carriers Association ("ALECA"); AT&T; Windstream and its certificated subsidiaries ("Windstream")³; Integra Telecom ("Integra")⁴; Arizona Public Service Company ("APS"); and Qwest Corporation d/b/a CenturyLink QC, CenturyLink Communications, L.L.C. and CenturyLink Public Communications, Inc. ("CenturyLink and certain of its affiliates").

III. Discussion.

7. The Applicants propose to amend the Rules to exempt telecommunications carriers, whose retail telecommunications services have all been determined to be competitive from application of the Rules, except as may otherwise be determined by a future Commission Order. The specific change proposed is based upon and supported by the changes to A.R.S. §40-285 made by the Arizona Legislature in 2013. The specific language change proposed by the Applicants is as follows:

...

¹ Chairman Susan Bitter Smith did not participate.

² In 2013, the legislature added Subpart (F) to the statute which reads as follows: F: "This section does not apply to a telecommunications corporation whose retail telecommunications services are all classified as competitive by the commission, except as may otherwise be determined by a commission order after the effective date of this amendment to this section."

³ Windstream Communications, Inc., Talk America, Inc., McLeodUSA Telecommunications Services, LLC and Paetec Communications, Inc.

⁴ Eschelon Telecom of Arizona, Inc., Electric Lightwave, LLC and Mountain Telecommunications of Arizona, Inc. all dba under Integra Telecom.

R14-2-802(A). Applicability.

A. These rules are applicable to all Class A investor-owned utilities under the jurisdiction of the Commission and are applicable to all transactions entered into after the effective date of these rules. Notwithstanding the preceding sentence, these rules shall not apply to a telecommunications utility whose retail telecommunications services have been classified as competitive by the Commission pursuant to A.A.C. R14-2-1101 et seq. except as may otherwise be determined by a future commission order.

7. The Applicants state that "the Rules will continue to apply to all Class A investor-owned utilities, including all telecommunications carriers, unless the carrier either (1) holds a Certificate of Convenience and Necessity issued by the Commission pursuant to A.A.C. R14-2-1105 or 1106 or (2) has had all of its retail telecommunications services classified as competitive by the Commission pursuant to A.A.C. R14-2-1108."⁵ Further, the Applicants state that the proposed amendment acknowledges and expressly preserves the Commission's authority to require individual utilities (otherwise exempt under the amended Rules) to comply with the Rules, if the Commission so orders."⁶

8. No party filing informal comments opposed the proposed rule change. All of the telecommunications providers filing informal comments supported the proposed rule change. Windstream states that the Legislature's exemption of competitive telecom providers from a review of asset transfers or dispositions, supports the requested change to the Rules. Given the addition of Subpart (F) to A.R.S. §40-285, Commission approval should not be required if that carrier's affiliate (or holding company) chooses to reorganize, merge, consolidate or refinance⁷. AT&T states that although the Rules provide for a waiver process, applying for and receiving waivers still ties up resources and because waivers are subject to interpretation, they do not provide the type of certainty desired by carriers.⁸ Integra believes that the Rules are unnecessary for competitive carriers.⁹ APS

⁵ Application at p. 5.

⁶ Id.

⁷ Windstream Informal comments at 1.

⁸ AT&T Informal Comments at 2.

1 does not oppose the change but would oppose any other amendments to the Rules that would have
2 the effect of increasing the affiliate regulation of electric utilities or affect any waivers granted to APS
3 by the Commission.¹⁰ CenturyLink states that the telecommunications market has changed
4 dramatically and that competitive telecom providers cannot make up for their bad business
5 diversification decisions by passing the losses through to utility customers in the form of rate
6 increases. Thus, there is no longer a need to require competitive providers to comply with the Rules.¹¹

7 **IV. Staff Recommendations**

8 9. Staff recommends that the Commission direct Staff to file, by February 12, 2016 with
9 the Office of the Secretary of State, for publication in the *Arizona Administrative Register* no later than
10 March 4, 2016, (1) a Notice of Proposed Rulemaking Docket opening and (2) a Notice of Proposed
11 Rulemaking that includes the text of the proposed rules set forth in Exhibit A. Staff further
12 recommends that the Commission direct Staff to include a preliminary Economic, Small Business and
13 Consumer Impact statement with respect to the proposed rules.

14 10. Based on consultation with the Hearing Division, Staff further recommends that the
15 Commission direct the Hearing Division to hold oral proceedings to receive public comment on the
16 Notice of Proposed Rulemaking on April 14, 2016, at 10:00 a.m., or as soon as practicable thereafter,
17 in Hearing Room No. 1 at the Commission's offices in Phoenix, Arizona.

18 11. Staff further recommends that interested parties be permitted to provide written
19 comments concerning the Notice of Proposed Rulemaking by filing any comments with the
20 Commission's Docket Control by April 4, 2016.

21 12. Staff further recommends that the Commission direct Staff to file, by April 11, 2016, a
22 summary of formal written comments received by April 4, 2016 along with Staff responses. Staff
23 should also be directed to file by May 6, 2016 a summary of all formal comments (both written and
24 oral) including those received after April 4, 2016 with Staff responses.

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28 ⁹ Integra Informal Comments at 1.

¹⁰ APS Informal Comments at 1-2

¹¹ CenturyLink Informal Comments at 3.

1 13. Finally, Staff further recommends that the Commission establish additional procedural
2 deadlines and requirements as may be necessary consistent with the Administrative Procedures Act
3 and Commission rulemaking procedures.

4 **CONCLUSIONS OF LAW**

5 1. Pursuant to Article 15, Section 3 and A.R.S. §§40-202, 40-203, and 40-321, the
6 Commission has authority and jurisdiction to revise A.A.C. Title 14, Chapter 2, Article 8 as described
7 herein and set forth in Exhibit A.

8 2. Under A.R.S. §41-1022, the Commission must file a Notice of Proposed Rulemaking
9 action with the Secretary of State.

10 3. Under A.R.S. §41-1023, the Commission must allow for public comment regarding the
11 Notice of Proposed Rulemaking.

12 4. It is just and reasonable and in the public interest for the Commission to issue a
13 Notice of Proposed Rulemaking as discussed herein including the changes proposed by Staff in
14 Exhibit A, and to hold an oral proceeding to obtain public comment regarding the proposed Rule
15 change, and to allow written comments to be filed regarding the rulemaking changes proposed by
16 Staff in Exhibit A.

17 5. Staff's recommendations in Findings of Fact 9-13 are reasonable and consistent with
18 relevant statutes and Commission rules.

19 **ORDER**

20 IT IS THEREFORE ORDERED that the Utilities Division/Legal Division shall prepare and
21 file, by February 12, 2016, with the Office of the Secretary of State, (1) a Notice of Rulemaking
22 Docket opening and (2) a Notice of Proposed Rulemaking for publication in the Arizona
23 Administrative Register no later than March 4, 2016 that includes the text of the proposed rules set
24 forth in Exhibit A. Staff further recommends that the Commission direct Staff to include a
25 preliminary Economic, Small Business and Consumer Impact statement with respect to the proposed
26 Rules, attached hereto. The notice or Proposed Rulemaking shall conform to the requirements of
27 A.R.S. §41-1022 and A.A.C. R1-1-502, and any additional Secretary of State requirements for
28 publication.

1 IT IS FURTHER ORDERED that the Hearing Division shall hold oral proceedings to
2 receive public comment on the Notice of Proposed Rulemaking on April 14, 2016, at 10:00 a.m., or as
3 soon as practicable thereafter, in Hearing Room No. 1 at the Commission's offices in Phoenix,
4 Arizona.

5 IT IS FURTHER ORDERED that interested parties are requested to provide written
6 comments concerning the Notice of Proposed Rulemaking by filing any comments with the
7 Commission's Docket Control by April 4, 2016; and to provide oral comments at the proceeding to be
8 held on April 14, 2016.

9 IT IS FURTHER ORDERED that the Utilities Division/Legal Division shall ensure that the
10 Preamble to the Notice of Proposed Rulemaking conforms to the requirements of A.R.S. §41-1001
11 (16) and states that (1) written comments on the Notice of Proposed Rulemaking should include a
12 reference to Docket No. AU-00000A-15-0246; (2) written comments should be filed with the
13 Commission's Docket Control by April 4, 2016; and (3) oral comments may be provided at the
14 proceeding to be held on April 14, 2016.

15 IT IS FURTHER ORDERED that the Utilities Division/Legal Division shall ensure that any
16 written comments filed with the Utilities Division rather than the Commissions Docket Control are
17 filed with the Commission's Docket Control.

18 IT IS FURTHER ORDERED that the Utilities Division/Legal Division shall, on or before
19 April 28, 2016, file with Docket Control an Economics, Small Business and Consumer Impact
20 Statement which conforms to A.R.S. §41-1057 (A)(2) that addresses the economic impacts of the
21 recommended changes to Rules.

22 IT IS FURTHER ORDERED that the Utilities Division/Legal Division shall, on or before
23 April 11, 2016, file with the Commission's Docket Control a document which includes a summary of
24 any written comments filed by interested persons between the effective date of this Order and April 4,
25 2016, and the Utilities Division's responses to those comments.

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1 IT IS FURTHER ORDERED that the Utilities Division/Legal Division shall, by May 6, 2016,
2 file a document which includes a summary of all written comments filed by interested persons
3 including those filed after April 4, 2016, and oral comments received at the oral proceedings in this
4 matter and the Utilities Division's responses to those comments.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6
7 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

8
9 _____
10 CHAIRMAN

COMMISSIONER

11
12 COMMISSIONER

COMMISSIONER

COMMISSIONER

13 IN WITNESS WHEREOF, I, JODI JERICH, Executive
14 Director of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of
17 Phoenix, this _____ day of _____, 2016.

18 _____
19 JODI JERICH
20 EXECUTIVE DIRECTOR

21 DISSENT: _____

22 DISSENT: _____

23 TMB:MAC:nr\MAS
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Decision No. _____

SERVICE LIST FOR: COMMISSION INQUIRY INTO POSSIBLE MODIFICATION OF THE
COMMISSION'S HOLDING COMPANIES AND AFFILIATED INTEREST RULES, A.A.C.
ARTICLE 8, R14-2-801 ET. SEQ.
DOCKET NO. AU-00000A-15-0246

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Glen Nelson 420 Bedford Street, Suite 250 Lexington, Massachusetts 02420	Ed Kazar Spectrotel, Inc 3535 State Highway 66, Suite 7 Neptune, New Jersey 07753	Neomi Groman France Telecom Corporate Solutions, LLC 13775 McLearen Road Mail Stop 1100 Oak Hill, Virginia 20171
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	Jane Mulvehill Globalinx Enterprises, Inc. 5LINX Enterprises, Inc. 275 Kenneth Drive Rochester, New York 14623	

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5		Natalia Rodrigues Wholesale Carrier Services, Inc. 12350 NW 39th Street Coral Springs, Florida 33067	
6	Susan Cockerham 1725 Windward Concourse, Suite 150 Alpharetta, Georgia 30005	Avelino Iglesias TeleUno, Inc 2754 West Atlantic Boulevard, Suite 8 Pompano Beach, Florida 33069	Julie Barlow Cincinnati Bell Any Distance, Inc. 221 East Fourth Street Room 103-1070 Cincinnati, Ohio 45202
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10	Karyn Bartel New Century Telecom, Inc. 3050 Royal Boulevard South, Suite 175 Alpharetta, Georgia 30022	Elena Thomasson Primus Telecommunication, Inc. 3903 Northdale Boulevard Suite 220E Tampa, Florida 33624	Eric Blackford 107 West Michigan Avenue, 4th Floor Kalamazoo, Michigan 49007
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13	Thomas P. Margavio Bellsouth Long Distance 675 West Pechtree Street NE Atlanta, Georgia 30308	Colin Wood 255 Pine Avenue N Oldsmar, Florida 34677	Phil Berry TDS Long Distance Corporation 525 Junction Road Madison, Wisconsin 53717
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15	Scott Howsare First Choice Technology, Inc. 903 Lake Lilly Drive, Suite A125 Maitland, Florida 32751	Thomas Speed, Jr. National Directory Assistance, LLC 12700 Townepark Way Louisville, Kentucky 40243	Donna Heaston 6160 Golden Hills Drive Golden Valley, Minnesota 55416
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8	Bill Gabor BCE Nexxia Corporation 138 East Randolph Suite 500 Chicago, Illinois 60601	Alex Valencia Matrix Telecom, Inc. 433 East Las Colinas Boulevard Suite 500 Irving, Texas 75039	Don Pittman NTS Communications, Inc. 1220 Broadway Lubbock, Texas 79401
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17	Richard Monto Neutral Tandem- Arizona, LLC 550 West Adams Street, Suite 900 Chicago, Illinois 60661	Sarah Baker Encompass Communications, LLC 119 West Tyler Street Suite 286 Longview, Texas 75601	Tim Gentry Zayo Group, LLC 400 Centennial Pkwy. - 200 Louisville, Colorado 80027
19	Heidi Huffman Stratus Networks, Inc. 4700 North Prospect Road Peoria Heights, Illinois 61616	Stephanie Jackson Network Communications International Corp. 606 East Magrill Street Longview, Texas 75601	Michael Nelson 183 Inverness Drive West Englewood, Colorado 80112
21	Matthew Myers Unite Private Networks, LLC 120 South Stewart Road Liberty, Missouri 64068	Amanda Harris NetworkIP, LLC 119 West Tyler Street, Suite 100 Longview, Texas 75601	Tamara Volmer Director of Tax dishNet Wireline L.L.C. 9601 S. Meridian Boulevard Englewood, Colorado 80112
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